

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:HMT:NEW:1:Postf-150390-01  
FPetrino

date: July 1, 2002

to: Frank Attianesi, Revenue Agent

from: WILLIAM F. HALLEY  
Associate Area Counsel  
(Large and Mid-Size Business)

---

subject: Request for Advice  
[REDACTED] Inc. ([REDACTED] 872)  
Extension of Statute of Limitations  
Tax Year Ending December 31, [REDACTED]

U.I.L. 6501.08-17

This memorandum responds to your request for advice regarding the proper corporate party to sign the Form 872, Consent to Extend the Time to Assess Tax, to extend the statute of limitations on assessment of tax of [REDACTED], Inc. and Subsidiaries ([REDACTED]) for the tax year ending December 31, [REDACTED]. The advice we render in this memorandum is conditioned on the accuracy of the facts you presented to us. This memorandum should not be cited as precedent.

**ISSUES**

What corporate entity is the proper party to sign the Form 872 with respect to [REDACTED]'s tax liability for the tax year ended December 31, [REDACTED]?

**CONCLUSION**

We recommend that [REDACTED]'s successor, [REDACTED], Inc., sign the Form 872 for the year at issue. We have included suggested language for the caption of such Form 872.

**FACTS**

[REDACTED] was the common parent of a group of consolidated subsidiaries during the tax year ending December 31, [REDACTED]. [REDACTED] owned several subsidiaries, including [REDACTED] Company,

██████████ Company, ██████████ Inc., and ██████████ Inc. On ██████████, ██████████ acquired ██████████% of the outstanding Class A Common stock of ██████████ in a stock purchase. ██████████ filed a separate short period consolidated tax return for the period ending on ██████████. ██████████ filed a consolidated U.S. Corporation Tax Return for the ██████████ tax year on behalf of itself and its consolidated subsidiaries, which included ██████████'s activities for the period of ██████████ through ██████████. On ██████████, ██████████ was liquidated into ██████████ under the provisions of I.R.C. § 332. This liquidation was not carried out via a State law merger.

The Vice President of Taxation of ██████████, the former common parent, is now also the Vice President of Taxation for ██████████. The Vice President of Taxation will sign the Form 872 for the year at issue. The members of the group did not designate an agent to act on their behalf with respect to the tax liability of ██████████.

#### DISCUSSION

The common parent, except as otherwise provided, shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return years in question. Treas. Reg. § 1.1502-77. If the common parent ceases to exist, Treas. Reg. § 1.1502-77(d) provides that the common parent, before its termination, may designate another member of the group to be the agent. If the district director approves such a designation, the designated member becomes the new agent for the group. In the absence of such a designation by the former common parent, the remaining members of the group, subject to the approval of the district director, may designate another member to act as agent for the group.

In addition, Temp. Treas. Reg. § 1.1502-77T provides for an alternative agent for the group for purposes of executing consents to extend the statute of limitations or mailing a notice of deficiency.<sup>1</sup> One of these alternative agents is a successor to the former common parent in a transaction to which section 381 applies. I.R.C. § 381 applies to a distribution in liquidation of a

---

<sup>1</sup>The Service published proposed regulations on September 26, 2000 which terminate the application of Temp. Treas. Reg. § 1.1502-77T. See Prop. Treas. Reg. § 1.1502-77(a). The proposed regulations are not applicable to the tax year at issue in this case. See Prop. Treas. Reg. § 1.1502-77(h).

subsidiary under the provisions of I.R.C. § 332. Therefore, [REDACTED] qualifies as a successor to [REDACTED] under Temp. Treas. Reg. Section 1.1502-77T. .

The members of the consolidated group never designated an agent. Consequently, [REDACTED], as the new common parent of the continuing group, has authority to act as agent under Temp. Treas. Reg. § 1.1502-77T(a)(4)(ii). [REDACTED]'s signature is binding on all existing members of the consolidated group, whether they have remained with the group or not.

Accordingly, you may describe the entity on the Form 872 as follows:

Insert EIN [REDACTED] in the block at the top right of the form. Show the taxpayer's name as: [REDACTED] Inc. (EIN [REDACTED]), as agent for the members of [REDACTED] Inc. (EIN [REDACTED]) and Subsidiaries consolidated group.\*

In the blank space after paragraph (2) insert:

\* This is with respect to the consolidated federal income tax liability of [REDACTED] Inc. and Subsidiaries consolidated group for the group's taxable year ending December 31, [REDACTED].

The signature block on Form 872 should read as follows:

Name of Officer  
Title of Officer  
[REDACTED] Inc.

#### PROCEDURAL CONSIDERATIONS

Please note that Section 3461 of the I.R.S. Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Service, each time that it requests a taxpayer to extend the limitations period, to advise the taxpayer of the right (i) to refuse to extend the statute of limitations on assessment, or, in the alternative, (ii) to limit an extension to particular issues or for specific periods of time. To satisfy this requirement, you may provide Publication 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the consent. Alternatively, you may advise the taxpayer in some other written form of the I.R.C. § 6501(c)(4)(B) requirement. In any event, you should document your actions in this regard in the case files.

In addition to the recommendations made herein, we further

recommend that you pay strict attention to the rules set forth in the IRM. Specifically, the IRM requires use of Letter 907(DO) to solicit a Form 872, Letter 928(DO) as a follow-up letter to Letter 907(DO) (when appropriate), and Letter 929(DO) to transmit a copy of the executed consent to the taxpayer. See IRM Handbook No. 121.2.22.3 and No. 121.2.22.4.2. Dated copies of both letters should be retained in the case file(s) as directed. When the signed Form 872 is received from the taxpayer, the authorized manager should promptly sign and date it in accordance with Treasury Regulation § 301.6501(c)-1(d) and IRM, Handbook No. 121.2.22.5.10. The manager must also update the respective statute of limitations in the continuous case management statute control files and properly annotate Form 895 or equivalent. See IRM, Handbook No. 121.2.22.5.11(1)(g). In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views. If you should have any additional questions regarding this matter, please contact Frederick Petrino at (973) 645-2539.

JOSEPH F. MASELLI  
Area Counsel (Heavy  
Manufacturing, Construction and  
Transportation: Edison)

By: 

WILLIAM F. HALLEY  
Associate Area Counsel  
(Large and Mid-Size Business)